Supreme Court, U. S.
FILED
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EDWARD BATES, JR., CLERK

71-1150

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Application of

PATENTS MANAGEMENT CORPORATION;
INNOVATORS MANAGEMENT AND CAPITAL CORPORATION,
ISRAEL PATENTS CORPORATION and
HEART DISEASE RESEARCH FOUNDATION,
as constituting the PENN CENTRAL
BONDHOLDERS PROTECTIVE COMMITTEE,

Petitioners

-against-

TRUSTEES OF THE PENN CENTRAL
TRANSPORTATION COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MAXIMILIAN BADER
I. WALTON BADER
Attorneys for Petitioners
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860.

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IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Application of

PATENTS MANAGEMENT CORPORATION,
INNOVATORS MANAGEMENT AND CAPITAL CORPORATION,
ISRAEL PATENTS CORPORATION and
HEART DISEASE RESEARCH FOUNDATION,
constituting the PENN CENTRAL
BONDHOLDERS PROTECTIVE COMMITTEE,

Petitioners

-against-

TRUSTEES OF THE PENN CENTRAL
TRANSPORTATION COMPANY,

Respondents.

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

This is a Petition for a Writ of Certiorari from a determination of the United States Court of Appeals for the Third Circuit which affirmed a determination of the United States District Court for the Eastern District of Pennsylvania which denied, as a matter of discretion, Petitioners' Application to Intervene generally in a bankruptcy proceeding.

OPINION OF THE COURT BELOW

See Appendix

THE QUESTION PRESENTED IN THIS PETITION

This Petition brings up a question of most compelling and important public interest which is, in brief, whether it is Constitutional to deprive a creditor of his right to be heard in a corporation reorganization merely because his interest (although substantial by ordinary standards) represents only a small fraction of the outstanding debt of the debtor.

JURISDICTION OF THIS COURT AND TIMELINESS OF THE PETITION

This Court acquires jurisdiction of this Petition pursuant to 28 USC 1254(1). The Petition is brought against a determination of the United States Court of Appeals for the Third Circuit issued January 26, 1972. This Petition is filed within three months from the date of the determination of the Court of Appeals.

F A C T S :

Petitioners, three corporations and a tax exempt charitable Foundation, are the owners of Forty-Three Thousand

($43,000.00) Dollars of bonds of the debtor, PENN-CENTRAL TRANSPORTATION COMPANY. The amount of bonds, while substantial, concededly represents only a small fraction of the total outstanding debt of the debtor. Two of the series of bonds held by the Petitioners, namely, the NEW YORK NEW HAVEN AND HARTFORD RAILROAD COMPANY GENERAL MORTGAGE INCOME BONDS Conc. 41/2% Series A, of which Petitioners hold Five Thousand ($5,000.00) Dollars and THE NEW YORK CENTRAL RAILROAD COMPANY Collateral Trust Bonds due April 1, 1980 of which the Petitioners hold One Thousand ($1,000.00) Dollars are not represented by any parties at all in these proceedings. The Court did grant General Intervention to the Indenture Trustees of the other series of bonds held by the Petitioners. The Indenture Trustees of the other series of bonds have serious conflicts of interest as set forth in the moving papers. These include Securities Act litigation against the MORGAN GUARANTY TRUST COMPANY based upon preferential sales of Penn Central securities based upon "tipee" information, the holding by the Indenture Trustees of large unsecured claims of Penn Central and the holding by the Indenture Trustees of large deposits from parties holding unsecured claims of Penn Central.

The applicable provisions of the Bankruptcy Act 11 USC 205(c)[13] require Court Permission for General Intervention in a Railroad Reorganization Proceeding.

Petitioners moved for such permission and, based upon the Court's discretionary powers, the Petitioners' Application was denied. Petitioners (other than ISRAEL PATENTS CORPORATION) filed proofs of claim for the bonds held (amounting to Forty-Two Thousand Dollars) and the original Petitioners and ISRAEL PATENTS CORPORATION again petitioned the Court for permission to generally Intervene as Creditors. The renewed Petition was again denied by the Court based upon the discretionary powers given by 11 USC 205(c)[13].

In the proceedings before the District Court, in addition to urging the grant of the Petitioner's Applications to Intervene based upon the facts set forth above, the Petitioners further made a direct attack on the Constitutionality of 11 USC 205(c) [13] on the ground that this section was invalid as repugnant to the "due process" clause of the Fifth Amendment to the Constitution of the United States. Petitioners further claimed that, even if the Section was valid, a denial of Petitioners' Applications, under the facts of this case, would constitute an Unconstitutional Application of 11 USC 205(c) [13]. Both claims were overruled by the District Court, without commenting on the Constitutional claims.

Appeal was then taken to the Court of Appeals for the Third Circuit, at which time the Constitutional claims

were again raised. The Court of Appeals, by Per Curiam Opinion which did not even comment on the Constitutional claims raised by the Petitioners, affirmed the District Court's determinations. This Petition followed.

POINT ONE

11 USC 205(c) [13] INSOFAR AS IT PROVIDES FOR DISCRETIONARY INTERVENTION IS UNCONSTITUTIONAL AS REPUGNANT TO THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Bankruptcy power (and with tt the power to reorganize corporations) is vested in the Federal Courts by the Constitution. The Bankruptcy power of the Courts, however, is subject to Constitutional limitations. (Louisville Land Bank vs. Radford 295 US 555; Ginsberg vs. Lindel, 107 Fed (2d) 721 and Thompson vs. Scratt, 95 Fed. (2nd) 214.).

In Bankruptcy the Courts of Bankruptcy have broad and wide powers. They can suspend the remedies of creditors having secured claims, they can permit the Trustees of a corporation in reorganization to issue Trustees Certificates which become preferred claims against the debtors assets even as against prior secured debts, and they can approve a

plan of reorganization which has wide interference with the normal preferences of claims. Obviously, any Court having such a large degree of control of claims against a debtor must hear objections or suggestions with respect to any action that the Court desires to take. Failure to give a creditor notice of action to be taken and the right to be heard constitutes a denial of "due process". Therefore, since 11 USC 205(c) [13] merely provides for discretionary intervention at the pleasure of the District Judge, this section of the Bankruptcy Act is Unconstitutional.

It is to be noted that a declaration of Unconstitutionality of the discretionary intervention provisions of the Bankruptcy Act will have limited impact on normal bankruptcy proceedings because the Act has a "separability clause" which saves the entire act with the exception of the questioned section.

In normal bankruptcy proceedings, all creditors are entitled, as of right, to be heard and to be given notice of all applications made in the proceedings. See the "Notice" provisions of 11 USC 94. However, rather usrprisingly, the "corporate reorganization" sections of the Act 11 USC 205(c) [13] involved in this

proceeding and the general corporate reorganization provisions in 11 USC 607 merely provide for "discretionary" intervention. The specific provisions of 11 USC 205(c) [13] read, as follows:

> "** The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either the trustee or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene, * * *"

It is submitted that the underlined portion of 11 USC 205 (c) [13] is in violation of the "due process" portion of the Fifth Amendment to the Constitution of the United States which reads, as follows:

> " * * * no person * * *shall * * * be deprived of life, liberty or property, without due process of law * * *"

The essence of "due process" is "fair play" Galvan vs. Press 347 US 522,

the right to present a claim or defense, Ackerman vs. US 178 Fed (2nd) 983, and Notice of any Hearings to be held, Haseltine vs. Zenith Radio Corp., 395 US 100, L. B. Wilson, Inc. vs. FCC, 170 Fed (2nd) 793, and Eisen vs. Carlisle, 391 Fed (2nd) 555. If intervention is granted only as a discretionary matter by a District Judge in Bankruptcy Proceedings then, it is submitted, that the provisions of the Act are repugnant to the Constitution.

Since the enactment of the above-quoted section there has not been a direct Constitutional attack on the provisions thereof. It is submitted that, as public ownership of corporations becomes more and more widespread, and larger and larger corporation bankruptcies occur, it becomes imperative to protect the Constitutional rights of stockholders and bondholders and insure that their rights are protected.

POINT TWO

IF PETITIONERS ARE NOT PERMITTED TO INTERVENE IN THIS CASE BECAUSE OF THE ALLEGEDLY SMALL PROPORTION OF THE PETITIONERS' HOLDINGS TO THE REMAINDER OF BONDS OUTSTANDING THEN THE DETERMINATION OF THE COURT IS IN VIOLATION OF THE FOURTEENTH AMENDMENT

TO THE CONSTITUTION OF THE UNITED STATES AS CONSTITUTING A DEPRIVATION OF EQUAL PROTECTION OF THE LAWS.

The Court of Appeals, in affirming the determination of the District Court denying general intervention to the Petitioners, held that Petitioners' interests, while substantial in themselves, represented only a very small proportion of the total amount of debt outstanding. Thus, if the rationale of the Court of Appeals is allowed to stand, the right of a creditor to participate in a reorganization proceeding will depend upon the size of the corporate debt involved and not the size of the creditors holdings. This, of course, is in direct violation of the "equal protection of the laws" provisions of the Fourteenth Amendment to the Constitution of the United States.

The Courts have held that the "equal protection of the laws" provisions of the Fourteenth Amendment are also applicable to Federal Proceedings, since they are inherent in "due process" requirements. See Harrell vs. Tobriner, 394 US 618, Washington vs. US, 401 Fed. (2nd) 654 and Conner vs. Finch, 314 Fed. Supp. 364.

Obviously, if the holder of a large proportion of the debt of a debtor is entitled to intervene generally but the holder of a small proportion of the debt of a debtor is not, then the party not permitted to intervene generally is not given "equal protection of the laws" and the statute has been Unconstitutionally applied.

POINT THREE

THE DENIAL OF GENERAL INTERVENTION BY THE COURT TO THE PETITIONERS HEREIN CONSTITUTES AN UNCONSTITUTIONAL APPLICATION OF THE STATUTE INVOLVED

The specific facts of this case indicate an Unconstitutional application of the statute involved even if the discretionary intervention provisions were otherwise Constitutional. It is noted that 11 USC 205(c) [13] gives any creditor the right to be heard. This, of course, mandates notice of all proceedings. However, the Courts have consistently held that a party not permitted to generally intervene is not entitled to notice of proceedings. This, of course, constitutes an Unconstitutional application

of the statute involved. Notice of all proceedings is mandated by Constitutional requirements.

POINT FOUR

DENIAL OF GENERAL INTERVENTION TO THE PETITIONERS IN THIS CASE, EVEN IF INTERVENTION WERE DISCRETIONARY IS AN IMPROVIDENT EXERCISE OF DISCRETION

Assuming arguendo, that intervention in the present case were merely discretionary, then under the specific facts of this case the denial of intervention to the petitioners herein was an improvident exercise of discretion on the part of the Court. This occurs because two series of bonds owned by the Petitioners are unrepresented by any one whatsoever. The Indenture Trustees on these series of bonds, for reasons of their own, have not appeared in this action. Therefore, since these series of bonds are unrepresented by anyone, the Petitioners should, at least, have the right to assert creditors' rights concerning these bonds. Therefore, the denial of intervention under the circumstances of this case was improper.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI HEREIN SHOULD BE, IN ALL RESPECTS, GRANTED.

Respectfully submitted,

MAXIMILIAN BADER
I. WALTON BADER
Attorneys for Petitioners
274 Madison Avenue
New York, N. Y. 10016
Telephone: (212) LE 2-6860.

APPENDIX

TO

PETITION

FOR WRIT OF CERTIORARI

Motion to Intervene, Dated August 20, 1970

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN BANKRUPTCY NO. 70-347

In the Matter of

PENN CENTRAL TRANSPORTATION COMPANY.

MOTION TO INTERVENE

I. Walton Bader, attorney for Patents Management Corporation, Innovators Management and Capital Corporation, Heart Disease Research Foundation, as constituting Penn Central Bondholders Protective Committee, hereby moves this Court, at a date to be set by the Court, to formerly intervene in the above-proceeding, in behalf of the parties named herein.

The grounds upon which this motion is based are set forth in the accompanying affidavit of I. Walton Bader, annexed to this motion.

Dated: August 20, 1970

Yours, etc.

I. WALTON BADER,
Attorney for Penn Central
Bondholders Protective Committee
Office and P. O. Address
274 Madison Avenue
New York, N. Y. 10016
Tel. (212) LE 2-6860.

WESSEL AND CARPEL,
Associate Attorneys for Penn
Central Bondholders Protective Committee

By: HENRY WESSEL, ESQ.
800 Bankers Securities Building
Walnut and Juniper Streets
Philadelphia, Pa. 19107.

Affidavit of George Abramson in Support of Motion to Intervene

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

State of Georgia
County of Fulton—ss.:

GEORGE ABRAMSON, being duly sworn, deposes and says:

I am the President of Patents Management Corporation, a Georgia corporation, of Georgia Savings Bank Building, Atlanta, Georgia. I am also the Chairman of the Penn Central Bondholders Protective Committee.

I make this affidavit in support of the petition made by the Committee herein to intervene in the above-entitled proceeding as a party.

Affidavit of George Abramson

At the outset, I have been informed by my attorney that since the amount of Penn Central Bonds of various types owned by the Members of the Committee constitutes many thousands of dollars (the amount of bonds owned by my Corporation alone is Eighteen Thousand ($18,000.) Dollars) that the Committee is entitled to intervene in this proceeding as a matter of right and is entitled to have notice of all proceedings had herein. However, in view of the statement by the Court that a formal motion is required, I am submitting this affidavit in support of the application.

My company is involved in the promotion and development of inventions and technology. My company owns a number of patents in various fields. Accordingly, it is possible that the participation of my company might be helpful in this proceeding in that possible suggestions of technological improvements in Penn Central operations might be made which might cause a reorganization of the company with minimum loss to the bondholders herein.

In addition, the parties in this proceeding who have the most to lose are the bondholders. It is their debts that will be "scaled down" when the reorganization plan is completed. Participation of a representative bondholders group, in this connection, is vital.

It is also my intention to apply to the Interstate Commerce Commission for permission to solicit various other bondholders of the Penn Central Transportation Company to join the Committee so that the representation by the Committee of such bondholders will be substantially increased.

It is believed that the requisite permission will be granted by the Interstate Commerce Commission so that

a substantial representation of Penn Central Bondholders on the Committee will be had.

However, in any event, both I, my Company, and the other Members of the Committee do not wish to be represented by any one else in this proceeding but by Mr. I. Walton Bader. Mr. I. Walton Bader has represented the interest of my Company, the interest of Innovators Management and Capital Corporation, and the interests of the Heart Disease Research Foundation, for many years. We have confidence in Mr. Bader and believe that he is competent to represent our interest. We do not have confidence in any other representation. We believe that we are entitled to have our own representation in connection with the bankruptcy proceeding involved herein.

WHEREFORE, the undersigned prays that this motion be in all respects granted.

GEORGE ABRAMSON

(Sworn to by George Abramson, August, 1970)

Affidavit of I. Walton Bader in Support of Motion to Intervene

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

State of New York
County of New York—ss.:

I. WALTON BADER, being duly sworn, deposes and says:

I am the attorney for Patents Management Corporation, Innovators Management and Capital Corporation, and Heart Disease Research Foundation, constituting the Penn Central Bondholders Protective Committee. I am a member of the Bar of the Supreme Court of the United States, the Court of Appeals of the State of New York, the District of Columbia, and the United States Court of Appeals for the Second Circuit. I was admitted to this case *Pro Hac Vice* by order of this Court and I am, therefore, entitled to participate in this proceeding. In accordance with the local rules of this Court, Philadelphia associate counsel, Wessel and Carpel, have also filed their appearance and communications can be had with Philadelphia associate counsel.

The Members of the Committee, whom the undersigned represents, are the owners of a substantial number of bonds of the bankrupt herein. The amount of these bonds total many thousands of dollars. Therefore, obviously,

the Members of the Committee have a substantial and important interest in this proceeding.

Formal proofs of claim are being prepared with respect to the bonds owned by the present members of the Committee.

It is obvious that the present Members of the Committee have a most substantial interest in the outcome of this proceeding. In addition, it is pointed out that one of the Members of the Committee is the Heart Disease Research Foundation, which Foundation is a charitable organization exempt from taxation under the Internal Revenue Laws of the United States. It is submitted that the participation of the Heart Disease Research Foundation in this proceeding will constitute representation of the "public interest" herein. It is true that the Interstate Commerce Commission is a party to this proceeding and presumably, will also represent the public interest. However, it is submitted, that the participation of a non-governmental body representing the public interest, will be most helpful herein.

For all of the above reasons, it is respectfully submitted that the participation of the Penn Central Bondholders Protective Committee in this proceeding, as a party, would be most appropriate.

WHEREFORE, the undersigned prays that this motion be in all respects granted.

I. WALTON BADER

(Sworn to by I. Walton Bader, August, 1970)

Renewed Petition for Intervention. Dated November 18, 1970

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

[SAME TITLE]

Renewed Petition for Intervention on Behalf of Patents Management Corporation, Innovators Management & Capital Corp., and Heart Disease Research Foundation, as Constituting the Penn-Central Bondholders Protective Committee

The Petitioners designated hereinabove, by their attorney, I. Walton Bader, and associate attorney, Henry Wessel hereby petitions this Court pursuant to Section 77 (c) (13) of the Bankruptcy Act, 11 USC 205 (c) (13), for General Intervention as Creditors of the Debtor in these proceedings.

As grounds in support of this Petition, Petitioners allege all of the grounds set forth in the prior Notice of Motion and Affidavits which were submitted on August 20, 1970, as well as the following additional grounds:

1. Petitioner, Patents Management Corporation, is a Corporation duly organized and existing under the Laws of the State of Georgia, having its office and place of business at Georgia Savings Bank Building, Atlanta, Georgia.

2. Petitioner Innovators Management & Capital Corp., is a Corporation duly organized and existing under the Laws of the State of New York, having its office and place of business at 274 Madison Avenue, New York, N. Y.

3. Petitioner, Heart Disease Research Foundation, is a Charitable Trust, duly organized and existing under the Laws of the State of New York, having its office and place of business at 963 Essex Street, Brooklyn, New York.

4. All of the said Petitioners are Bondholders of the Bankrupt hereinabove and their total holdings are substantial, amounting to Forty Two Thousand ($42,000.00) Dollars.

5. All of said Petitioners have been clients of the said, I. Walton Bader, principal attorney for the Petitioners herein, prior to the date of Bankruptcy of the Debtor herein and said Petitioners have requested the aforesaid, I. Walton Bader, to represent them in this proceeding. There has been no solicitation of the said Petitioners by anyone in connection therewith.

6. The specific holdings of the Petitioners, are in the Bonds of the Debtor and are detailed as follows:

Bond Type	*Amount*	*Serial Number*	*Holder*
New York New Haven and Hartford Railroad Company General Mortgage Income Bond Conv. 4½% Series A	$1,000.	1M 429542	Innovators Management and Capital Corp.
"	$1,000.	1M 429543	"
"	$1,000.	1M 429544	"
"	$1,000.	1M 429545	"
"	$1,000.	1M 429546	"
The Pennsylvania Railroad Company General Mortgage 4½% Bond Series E due July 1, 1984	$1,000.	G 709	"
Penn Central Company Collateral Trust 6½% Bond due April 15, 1993	$1,000.	01139	Heart Disease Research Foundation
The New York Central Railroad Company Collateral Trust 6% Bond due April 1, 1980	$1,000.	M 27815	"
The New York Central Railroad Company Collateral Trust 6% Bond due April 15, 1990	$1,000.	M 9800	Patents Management Corporation
"	$1,000.	M 7439	"
"	$1,000.	M 8063	"
"	$1,000.	M 6351	"
"	$1,000.	M 7440	"
Pennsylvania RR Company General Mortgage 4½% Series E due July 1, 1984	$1,000.	31496	Innovators Management & Capital Corp.
"	$1,000.	31495	"
"	$1,000.	23862	"

Bond Type	*Amount*	*Serial Number*	*Holder*
Pennsylvania RR Company General Mortgage 4½% Gold Bond Series D due April 1, 1981	$1,000.	23454	"
"	$1,000.	31000	"
"	$1,000.	31609	"
"	$1,000.	2190	"
"	$1,000.	46000	"
The New York Central Railroad Company Consoidation Mortgage Gold Bond 4% Series A	$1,000.	45736	"
"	$1,000.	50111	"
"	$1,000.	31330	"
"	$1,000.	20191	"
"	$1,000.	23541	"
The New York New Haven and Hartford Railroad Company First and Refunding Mortgage Bond 4% Series A due July 1, 2007	$1,000	M 48603	"
"	$1,000	M 981	"
"	$1,000	M 45745	"
"	$1,000	M 4422	"
"	$1,000	M 13207	"
The New York Central Railroad Company Refunding and Improvement Mortgage Bond 5% due October 1, 2013	$1,000.	M 30928	Patents Management Corporation
"	$1,000.	M 4102	"
"	$1,000.	M 48648	"
"	$1,000.	M 26307	"
"	$1,000.	M 27990	"

Bond Type	*Amount*	*Serial Number*	*Holder*
The New York Central Railroad Company 4% Consolidation Mortgage Gold Bond due Feb. 1, 1998, Series A	$1,000	36424	"
"	$1,000	36423	"
"	$1,000	60271	"
"	$1,000	36425	"
"	$1,000	16962	"
The Pennsylvania Railroad Company General Mortgage 3½% Bond, Series F, due January 1, 1985	$1,000	4571	"

7. Petitioners are Creditors of the Debtor and are entitled to be heard, as of right, pursuant to 11 USC 205(c)(13). In addition, Petitioners do not wish to be represented by the various Indenture Trustees (Banks) upon the ground that said Indenture Trustees are not competent to represent the interest of Petitioners, that said Indenture Trustees (Banks) may have conflicting interests to those of Petitioners.

8. On information and belief, the following constitutes the possible conflicting interests that said Indenture Trustees (Banks) have in these proceedings:

a. In addition to being Indenture Trustees, said Indenture Trustees (Banks) also have, or represent, a large amount of unsecured claims against the Debtor. Since the Bonds owned by the Petitioners represent secured claims, the said Indenture Trustees (Banks) will be faced with a decision as to whether their primary interests lie

with the secured Creditors or with the unsecured Creditors.

b. On information and belief, the aforesaid Indenture Trustees (Banks) have large sums of money on deposit from depositors who also hold large unsecured claims against the Debtor. The recommendation made by said Indenture Trustees (Banks) in connection with a plan for reorganization might be affected thereby.

c. On information and belief, the said Indenture Trustees (Banks) have large loans outstanding to firms which also have large unsecured claims against the debtor. Such fact might affect the judgment of said Indenture Trustees (Banks) in proposing a plan of reorganization.

9. There are presently proceedings pending which affect the interests of the Petitioners, and in these proceedings it is Petitioners' intention to take a position. In particular, the Petitioners are concerned about the Application for Payment of Bond Interest which is pending before this Court on November 30, 1970, and Petitioners intend to take a position thereupon, as soon as this Petition for Intervention is granted.

10. Since the Court, under its Bankruptcy Power, has the right to affect the property of the Petitioners by entering a Plan of Reorganization, deferring payment of obligations, modifying preferences of Creditors, scaling down debts permitting the Trustees to issue Trustee Certificates which constitute Superior Liens on the property of the Debtor and affect the security of Petitioners' claims; failure to permit to intervene generally in this proceeding, would constitute deprivation of Petitioners' property without due proces of Law, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

Renewed Petition for Intervention

11. All of the proceedings in this case will affect the interests of the Petitioners. This includes, for example, the Trustees' decisions relating to the operation of the Debtor Railroad, Administrative decisions, suggestions of reorganization plans, etc.

12. Prior to the filing of the Petition for Reorganization by the Debtor herein, some 15 Executives of the Debtor, unloaded more than forty thousand shares of Penn-Central stock for some two million dollars at prices between $40.00 a share and $70.00 a share. This stock is now selling at approximately $7.00 a share. There have also been statements by Governmental agencies that certain fraud possibilities may exist in connection with the Debtor's present difficulties. It is submitted that the Petitioners herein should have the right to explore these questions in order to protect their interests.

13. In addition to the above, on information and belief, the Petitioners believe that the parent Company, Penn-Central Company, may be responsible for the debts of the Debtor and that Petitioners may have the right to reach Penn-Central Company assets. Intervention in these proceedings is necessary on the part of Petitioners in order to obtain this relief.

14. One of the Petitioners, Heart Disease Research Foundation, is a Charitable organization. Intervention by this organization would provide an additional representative of the public in connection with all proceedings to be taken herein.

15. This Court has, previously, treated Petitioners as if they had been granted Leave to Intervene.

Renewed Petition for Intervention

WHEREFORE, Petitioners pray that this Petition for Intervention be, in all respects, granted.

Dated: November 18, 1970

Respectfully submitted,

PATENTS MANAGEMENT CORPORATION,
INNOVATORS MANAGEMENT & CAPITAL CORP.

and

HEART DISEASE RESEARCH FOUNDATION, as constituting the PENN-CENTRAL BONDHOLDERS PROTECTIVE COMMITTEE

By: MURRAY DONITZ,
Secretary.

(Verified by Murray Donitz, November 18, 1970)

Order No. 139, Denying Petition for Intervention

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

Order No. 139

AND NOW, this 25th day of January, 1971, it is ORDERED that the petition of the Penn Central Bondholders Protective Committee (document 302) for leave to intervene is DENIED.

JOHN P. FULLAM
J.

Second Renewed Petition for Intervention

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD

[SAME TITLE]

Renewed Petition for Intervention on Behalf of Patents Management Corporation, Innovators Management & Capital Corp., and Heart Disease Research Foundation, as Constituting the Penn Central Bondholders Protective Committee

The Petitioners designated hereinabove, by their attorney, I. Walton Bader, and associate attorney, Henry Wessel, hereby, through their Petition to this Court, pursuant to Section 77(c)[13] of the Bankruptcy Act 11 USC 205(c)[13] for general intervention as Creditors of the Debtor in these proceedings.

A prior Petition made by these parties was denied by this Court in its Order No. 139 on January 25, 1971.

Since the denial of the prior Application, the Petitioners herein have filed Proofs of Claim, and, it is submitted, that by reason thereof, these Petitioners are Creditors of the Debtor and are entitled to intervene and be heard as a matter of right.

In support of the Renewed Petition herein, your Petitioners allege the following:

Second Renewed Petition for Intervention

1. Incorporated, by reference in this Petition, are all of the allegations made in the prior Petition, dated November 18, 1970, as well as the following additional allegations:

A. On May 27, 1971, the Petitioner, Heart Disease Research Foundation, filed Proof of Claim with respect to principal and interest, on New York Central Railroad Company Six Per Cent Bond, No. M-27815, due April 1, 1980.

B. On May 27, 1971, your Petitioner, Innovators Management & Capital Corp., filed its Proof of Claim with respect to New York, New Haven and Hartford Railroad Company, General Mortgage Bonds, Nos. IM-429542, IM-429543, IM-429544, IM-429545 and IM-429546.

C. On May 27, 1971, your Petitioner, Patents Management Corporation, filed Proof Claim with respect to the following Bonds:

1. New York Central Railroad Company Bonds: Nos. 58054, 40774, 58331, 59296 and 40775.

2. Pennsylvania Railroad Company Bonds. Nos. 2190, 31609, 31006, 25354, and 46000.

3. Pennsylvania Railroad Company Bond. No. 4571.

4. New York Central Railroad Company Bonds. Nos. 6331, 7439, 7440, 9800 and 8063.

5. New York Central Railroad Company Bonds, Nos. 30111, 31330, 20191, 23541, 16962, 36425, 60271, 36423, 36424 and 45736.

6. New York Central Railroad Company Bonds, Nos. M-26307, M-27990, M-4102, M-48648 and M-80928.

7. Pennsylvania Railroad Company Bonds, Nos. 16871, 11430, 23862, 31495 and 31496.

8. New York, New Haven & Hartford Railroad Company Bonds, Nos. M-45745, M-48603, M-981, M-13207 and M-4422.

2. By reason of the filing of the aforesaid Proofs of Claim, your Petitioners are now Creditors in the Bankruptcy Proceedings who are entitled to intervene therein to protect their interests, as a matter of right.

3. By reason of the conflicts of interest already shown in these proceedings with respect to the Indenture Trustees, it is obvious that the representation of your Petitioners by such Indenture Trustees is not adequate and that insistance that your Petitioners be represented by such Indenture Trustees, would constitute a violation of the Fifth Amendment of the Constitution of the United States and a deprivation of Petitioners' property, without due process of law.

4. There are presently pending, in the Bankruptcy Proceedings, questions of great importance to your Petitioners. These questions relate to the sale by the Debtor of substantial real estate and subsidiary corporate interests. Under the present posture of this proceeding, your Petitioners have no standing to offer suggestions with respect to these questions, constituting a further taking of Petitioner's property, without due process of law.

Second Renewed Petition for Intervention

WHEREFORE, YOUR PETITIONERS PRAY that the Renewed Petition, be, in all respects granted.

Dated: June 3, 1971

Respectfully submitted,

PATENTS MANAGEMENT CORPORATION,
INNOVATORS MANAGEMENT & CAPITAL CORP.

and

HEART DISEASE RESEARCH FOUNDATION, as constituting the PENN-CENTRAL BONDHOLDERS PROTECTIVE COMMITTEE

By: s/ MURRAY DONITZ,
Secretary

(Verified by Murray Donitz, June 3, 1971)

Order No. 309 Denying Renewed Petition for Intervention

IN THE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[SAME TITLE]

Order No. 309

AND NOW, this 30th day of June, 1971, it appearing that petitioners have insufficient interest in these proceedings to be permitted to intervene generally, it is ORDERED that the renewed petition for intervention on behalf of the Penn-Central Bondholders Protective Committee is DENIED.

JOHN P. FULLAM
J.

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 71-1264 and 71-1834

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor

PATENTS MANAGEMENT CORPORATION, INNOVATORS MANAGEMENT AND CAPITAL CORPORATION, and HEART DISEASE RESEARCH FOUNDATION, as constituting the Penn-Central Bondholders Protective Committee,
Appellants in No. 71-1264

ISRAEL PATENTS CORPORATION, INNOVATORS MANAGEMENT AND CAPITAL CORPORATION, PATENTS MANAGEMENT CORPORATION AND HEART DISEASE RESEARCH FOUNDATION AS CONSTITUTING THE PENN CENTRAL BONDHOLDERS COMMITTEE,
Appellants in No. 71-1834

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Submitted December 9, 1971

Before McLAUGHLIN, ALDISERT and ROSEN,
Circuit Judges

OPINION OF THE COURT

(Filed January 26, 1972)

PER CURIAM:

Appellants, calling themselves Penn-Central Bondhold-

ers Protective Committee, appeal from the decision of the Reorganization Court (United States District Court for the Eastern District of Pennsylvania) which on two occasions denied their petition to intervene generally in this bankruptcy matter. In the brief for appellants it is said under "Facts" that appellants are bondholders of the bankrupt "in the amount of approximately Fifty Thousand ($50,000.) Dollars". Later on in the brief for appellants the second petition for intervention alleges that they are bondholders of the bankrupt and that their total holdings amount "to Forty-Two Thousand ($42,000.00) Dollars". It is stated on behalf of the bankrupt's trustees that appellants own $42,000 in bonds of the debtor. That amount is about .000022 or .0022 of 1% or 1/45,238th% of the outstanding long-term indebtedness of the debtor. The Bankruptcy Court, exercising its discretion, has allowed Governmental bodies, labor organizations, mortgage trustees, the Penn Central Company, the Trustees of the New York, New Haven and Hartford Railroad Co. and certain other parties to intervene. The Court denied the petitions of other applicants including appellants. Appellants' petition to intervene generally was denied because in this vast bankruptcy, as appellees state, intervention in the proceedings therein must be held to manageable proportions. The outstanding long-term debt of the bankrupt is $1,906,761,767. Other liabilities and deferred credits total $582,276,848. In this situation it is obviously vital to group the creditor interests so that they be properly taken care of. Having in mind that there are over 150,000 creditors involved in this proceeding, it is quite a task. Judge Fullam and the Trustees are doing everything possible to expedite this reorganization and seeing to it that all bonafide creditors are fairly protected, including the present appellants.

The Court in this discretionary problem wisely insisted that representative intervenors, covering all of the various types of the bankrupt's creditors, be allowed to intervene. This action materially helps the entire proceeding to continue to move forward to as speedy conclu-

sion as possible under the circumstances. See In the Matter of the Central Railroad Company of New Jersey, 429 F.2d 507 (3rd Cir. 1970), cert den. 401 U.S. 938 (March 1, 1971); Blumgart v. St. Louis-San Francisco Railway Co., 94 F.2d 712, 716 (8th Cir. 1938); In re Denver & R. G. Western R. Co., 13 F.Supp. 821, 824 (D.C. Col. 1936); In re Central of Georgia Ry. Co., 55 F.Supp. 310, 313 (S.D. Georgia 1944). None of the cases cited on behalf of appellants sustains its theory of general intervention under the facts before us. It will be remembered that where any creditor considers that it has a particular problem which warrants being specially presented to the Bankruptcy Court, the latter will pass upon the merits of such request.

In the circumstances before us, Judge Fullam acted properly and well within his discretion. For the reasons expressed in this opinion, the orders 139 and 309 denying appellants' petitions to intervene generally in these proceedings are affirmed.

A True Copy

Teste:

Clerk of the United States Court of Appeals for the Third Circuit